XII

A BILL TO AMEND THE MADRAS ABKARI ACT, 1886.

* Mr. J. A. Saldanha :—" Mr. President, Sir, I beg to move that my Bill [a] to amend the Madras Abkari Act, 1886, be referred to a Select Committee. I have sent an amendment to ask the permission of the House that the number of Members on the Select Committee may exceed 15 and may be increased to 20."

3-45 p.m. The hon. the President :—" The question is that the Select Committee may consist of twenty members."

The motion was put to the House and carried.

* Mr. J. A. Saldanha :—" I now beg to move, Sir, that the Bill to amend the Madras Abkari Act, 1886, be referred to a Select Committee composed of the following Members :—

(1) The hon. Mr. S. Muthiah Mudaliyar,
(2) Rao Bahadur Sir A. P. Patro,
(3) Diwan Bahadur R. N. Arogyaswami Mudaliyar,
(4) The hon. the Advocate-General,
(5) Mr. J. A. Saldanha,
(6) „ J. A. Davis,
(7) „ W. O. Wright,
(8) Dr. B. S. Mallayya,
(9) Mr. K. Uppi Sahib,
(10) „ P. Bhaktavatsulu Nayudu,
(11) „ G. Harisarvottama Rao,
(12) „ L. K. Tulasiram,
(13) Rao Sahib R. Srinivasan,
(14) Mr. K. R. Karant,
(15) „ A. B. Shetty,
(16) „ C. B. Cotterell,
(17) „ S. N. Dorai Raja,
(18) „ D. K. Syed Ibrahim Sahib,
(19) „ K. Krishnan and
(20) „ P. T. Rajan.

" In making this motion, Sir, I request the House to bear with me with some patience while I explain the reasons for the present Bill to amend the Abkari Act of 1886."

The hon. the President :—" Does the hon. Member think that it is likely to be opposed ? "

Mr. J. A. Saldanha :—" I am going to explain the reasons, Sir."

The hon. the President :—" Is it necessary to do so if the Bill is not going to be opposed, in the interests of expeditious disposal of business ? "

Mr. J. A. Saldanha :—" I do not expect opposition seriously. But I want to briefly explain my position."

The hon. Mr. S. Muthiah Mudaliyar :—" I am not opposing the Bill exactly ; but I want to say a few words on the questions specifically raised there."

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10th October 1928]

* Mr. J. A. SALDANHA :—" Sir, the Madras Abkari Act of 1886 is based to a great extent on the Bombay Act of 1878, probably because the Bombay Presidency has been going ahead of us in the matter of their excise policy which is of a most reactionary nature and very injurious to the welfare of the people of this country. Be that as it may, I am now proposing certain amendments to the Abkari Act which are certainly not of a retrograde character and which should certainly commend themselves to the Government. One of the amendments, if passed, will also bring some additional revenue to the Government and the other will to some extent restrict the arbitrary action of the Abkari officials in the matter of the seizure of articles of the people in the villages who commit abkari offences.

" I shall now deal first with the second of my amendments which relates to clubs. Clause 3 of my Bill provides that to section 15 of the Madras Abkari Act of 1886 the following explanation shall be added :—

'*Explanation.*—The supply of liquor in clubs to their members on payment of a price or of any fee subscription is a sale within the meaning of this section.'

" These words, Sir, I have taken from the Amending Act of 1925 of the Bombay Government. When that Act was passed by the Bombay Government, I brought it to the notice of the Members of this Council, but I was subjected to much sceptical laughter on that occasion when I stated that that Act was brought forward by the Bombay Minister. The effect of that Act was to place all clubs on a par with the liquor shops. I may here point out that clubs are exempt from payment of duties which liquor shops have to pay. Apart from the customs duties, the liquor shops are also subjected to a number of duties which clubs are free from; for instance, the liquor shops have to pay Rs. 1,000 every year for getting a licence for selling foreign liquor in cases, i.e., F.L. No. 1. They have also to pay Rs. 500 a year for selling liquor in bottles, and they are also paying a lot of other duties. By this means, the Government are making good revenue. At the same time, clubs are free from all these exacting duties. In this way, Government are losing a large sum of money, although they are entitled to it. Sir, it is not from a point of petty jealousy that I move this Bill, but I do so in the interests of the revenues of the State as well as with a view to do justice to the liquor shops who alone have now to pay the duties, from which the clubs are exempt, whether they sell liquor wholesale or in retail. Personally I should like to have exemption from liquor duties on a large scale, but I do not know why some people should get liquor duty free. For this reason, Sir, just as the Bombay Government have done, I trust this Government also place the clubs on a par with the liquor shops, and accept my proposal. There are many liquor shops in this Presidency, and I do not think the number is in any way less than that in the Bombay Presidency ; and so, in the interests of the State revenues, I propose that the clubs also should be placed on a par with the liquor shops.

" As regards my other amendment, Sir, there might perhaps be some difficulty in inducing Government to accept my proposal. But I base my proposition on a fundamental principle. In the case of seizing articles under the Criminal Procedure Code, Sir, I think the Police officer will be justified in going and seizing articles of the man whom he thinks has committed any criminal offence ; but in the case of the Abkari Act I say the scope for

abuse is much greater and there is a restriction on the liberty of man. I do not think there is any moral turpitude in manufacturing liquor; it is a liberty enjoyed by all the people in the world. (Hear, hear.) It is a liberty which mankind has been enjoying from ancient times. We do not see any restriction placed in the case of foreign liquor, but when it is a question of manufacture in India, all sorts of restrictions are imposed. In every country licence fees are imposed; but this interference with our right to manufacture and sell liquor in India seems to be an interference with one of the liberties which people all over the world enjoy. I may point out, Sir, that in the case of the seizure of an article by the Police which they have reason to suspect is stolen property, the burden of proof rests with the Police officer but in the case of the seizures under the Abkari Act, it is just the reverse and we know very well from experience that this power is often abused by the officials who always bring innocent persons to trouble because some article is found in their possession or in the backyard of their houses, etc. As a matter of fact, in many cases, the articles are thrown into other people's houses by somebody and the wrong person is always brought to account. Therefore, for the protection of the innocent people, I have brought forward this amendment. Section 103 of the Criminal Procedure Code under which the Police make searches says:

Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search, and may issue an order in writing to them or any of them so to do.

'The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it . . .'

"What I say is that the abkari officer also should be placed under the same restrictions before making seizure without search. It is for the Select Committee to give particular facilities to the abkari officer or the village officer, etc., and I have no objection to the Abkari Act being so amended as not to make it easy, without unnecessary obstruction, for the abkari officer to seize an article. I would therefore press upon the attention of the Members of this Council that firstly in the interests of the revenues of the State and secondly for the protection of the liberty of men this Bill ought to commend itself to the acceptance of the hon. Members of this House.

"I hope, Sir, I have made my points clear, and that I shall have the support of the House in this matter."

Mr. K. Uppi Sahib:—"Mr. President, Sir, I second the motion."

4 p.m. The hon. the President:—"The question is that the Bill be referred to a Select Committee consisting of twenty members as read out by the Mover of the Bill."

* The hon. Mr. S. Muthiah Mudaliyar:—"Mr. President, Sir, I am indebted to the hon. Member from Mangalore for some of the observations he made. I may assure hon. Members of this House that the Government do not want to take advantage of such observations. What the hon. Member wants is that when liquor is seized without a search,

the Abkari officer should have two more witnesses to the seizure. Section 103 of the Criminal Procedure Code applies where articles are seized, and in the Abkari Act there are two sections, one dealing with search and another with seizure without search. Where there is seizure without search, my hon. Friend wants that the provisions which apply to search should also apply. Reading the two sections together, of the Criminal Procedure Code and of the Abkari Act, I am not quite sure we would be able to make any reasonable interpretation of the clause as put by the hon. the Mover of the Bill. I think radical amendments will have to be made if possible to make something useful out of it, and if that is not possible it may have to be deleted and Government do not propose to oppose this at present. Then, the next thing the hon. Mover wanted was to enhance the revenues. I am not perfectly sure that if this provision is made in the Abkari Act, whether the income will be more or expenditure that will have to be incurred for staff by enforcing the law will be more. I am not quite sure whether it would be a source of gain. If my hon. Friend is really anxious that the revenue should be enhanced, I believe an alteration of the whole scheme will have to be made. The hon. Member says that in Bombay they have introduced it. There were a number of bogus clubs and to avoid the evil, the legislation was made. I am not quite sure how many clubs there are to answer the description in this province. My hon. Friend has not given any statistics in support of his statement. After all how many clubs there are in this province which are exempted from licence fees ? It is only non-proprietary clubs that are exempted from these licences, because Government consider, and I think rightly, that the distribution of liquor among the members of a club is not sale at all. If my hon. Friend wants to change the definition of sale and wants to impose any duty on these clubs, all right. If suitable amendments are made, the Government won't have any objection to it. With these few observations as regards the principles and objects of the Bill, I have no objection to this Bill going to a Select Committee."

The hon. the President :—"The question is that the Bill be referred to a Select Committee composed of the following members :—

(1) The hon. Mr. S. Muthiah Mudaliyar.
(2) Rao Bahadur Sir A. P. Patro.
(3) Diwan Bahadur R. N. Arogyaswami Mudaliyar.
(4) The hon. the Advocate-General.
(5) Mr. J. A. Saldanha.
(6) ,, J. A. Davis.
(7) ,, W. O. Wright.
(8) Dr. B. S. Mallayya.
(9) Mr. K. Uppi Sahib.
(10) ,, P. Bhaktavatsalu Nayudu.
(11) ,, G. Harisarvottama Rao.
(12) ,, L. K. Tulasiram.
(13) Rao Sahib R. Srinivasan.
(14) Mr. K. R. Karant.
(15) ,, A. B. Shetty.
(16) ,, C. B. Cotterell.
(17) ,, S. N. Dorai Raja.

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(18) Mr. Syed Ibrahim Sahib.
(19) „ K. Krishnan,
(20) „ P. T. Rajan."

The motion was put to the House and carried.

VIII—*cont.*

A BILL FOR THE SUPPRESSION OF BROTHELS AND IMMORAL TRAFFIC—*cont.*

* Mr. K. R. VENKATARAMA AYYAR :—" Sir, I wish to express my sincere regret for having caused some inconvenience to you, Mr. President, and to the House and for having caused some dislocation in the course of the transaction of the day's business. I hope you will accept my apologies.

" I now wish to move that the House do give me leave to take up again item No. 16 on the agenda, viz., the Bill for the Suppression of Brothels and Immoral Traffic."

The hon. the PRESIDENT :—" I wish to know whether there is any objection ? "

Mr. SAMI VENKATACHALAM CHETTI :—" There is no objection except that this might not be a precedent for future occasions."

The hon. the PRESIDENT :—" Since there is no objection by the House, on condition that it shall not form a precedent in future, the hon. Member has got the leave of the House to move."

* Mr. K. R. VENKATARAMA AYYAR :—" I now move that the Bill for the Suppression of Brothels and Immoral Traffic be referred to a Select Committee composed of the following members :—

(1) The hon. the Law Member.
(2) Dr. (Mrs.) S. Muthulakshmi Reddi.
(3) Swami A. S. Sahajanandam.
(4) Syed Tajuddin Sahib Bahadur.
(5) Mr. Abdul Hamid Khan.
(6) Dr. B. S. Mallayya.
(7) Mr. C. S. Govindaraja Mudaliyar.
(8) „ P. Anjaneyulu.
(9) „ B. Ramachandra Reddi.
(10) Diwan Bahadur S. Kumaraswami Reddiyar.
(11) Diwan Bahadur R. N. Arogyaswami Mudaliyar.
(12) Mr. K. P. Raman Menon.
(13) „ C. Gopala Menon.
(14) „ W. O. Wright.
(15) „ K. R. Venkatarama Ayyar.
(16) The hon. Khan Bahadur Sir Muhammad Usman Sahib Bahadur.
(17) The hon. the Advocate-General.
(18) Mr. C. B. Cunningham.
(19) „ L. K. Tulasiram.
(20) Rao Bahadur Sir A. P. Patro,
(21) Rao Bahadur B. Muniswami Nayudu.
(22) Rao Sahib R. Srinivasan.
(23) Mr. Ramnath Goenka.
(24) The Zamindar of Gollapalli."

Mr. C. GOPALA MENON :—" I second the motion, Sir."